

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

TECK COMINCO ALASKA, INCORPORATED<sup>1</sup>

Employer

and

Case 19-RC-14650

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 1547,  
AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record<sup>2</sup> in this proceeding, the undersigned makes the following findings and conclusions.<sup>3</sup>

**I. SUMMARY**

The Employer is a State of Alaska corporation engaged in the business of mining zinc and lead at the Red Dog Mine, which is located approximately 90 miles north of Kotzebue, Alaska. The Employer also operates a port approximately 50 miles west of the mine on the shore of the Chukchi Sea, where it stores the processed zinc and lead and loads it on to ships for transport around the world. The Petitioner filed the instant petition and claims that the unit sought, which is composed of the approximately 10 powerhouse operators employed by the Employer at the mine, constitutes a craft unit of functionally distinct employees who share a community of interest separate and apart from the Employer's other employees. Contending that the unit sought is inappropriate, the Employer asserts that the employees sought by the Petitioner are not a craft unit, and that the only appropriate unit is a wall-to-wall unit comprising the approximately 225

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<sup>1</sup> The Employer's name appears as corrected at the hearing in Case 19-RC-14625, whose record was received into evidence at the hearing in the instant case.

<sup>2</sup> The Employer and the Petitioner filed timely briefs, which were duly considered.

<sup>3</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

production and maintenance employees other than the electrical department employees.<sup>4</sup> Based on the record as a whole and the parties' respective briefs, I find that the petitioned-for unit of powerhouse employees constitutes an appropriate unit of functionally distinct employees and shall order an election be held in that unit.

Below, I have set forth the evidence presented in the hearing concerning the operations of the Employer and its powerhouse, and the factors the Board analyzes in determining whether the petitioned-for unit is appropriate. Following the presentation of the evidence, I have set forth a brief summary of the parties' positions, a section applying the legal standards to the evidence, and my conclusion. The decision concludes with a direction of election and the procedures for requesting review of this decision.

## **II. FACTUAL BACKGROUND**

### **A. The Employer's Operations**

The Employer operates an open pit mine and port operation known as the Red Dog Mine from which it extracts and processes zinc and lead ore. The mine commenced operations in 1989. The mine is operated and managed as part of a joint venture partnership with an Alaska regional corporation known as Nana. The mine is situated in a remote area of Alaska approximately 90 miles north of Kotzebue. It operates on a 24-hour per day, 7-day per week basis. Rock is extracted from the surface mine through blasting and stockpiled before it is crushed into coarse ore and then placed into an enclosed building for dust handling. Beneath that building are underground feeders that feed the ore by conveyor belt to the Employer's milling operation, which grinds the ore down to a very fine powder mixture. Zinc and lead are then extracted from the powder mixture during the flotation stage through the use of water, chemicals, and air. Dewatering is the last stage of the milling process, whereby 91% to 92% of the moisture is extracted from the lead and zinc concentrate. Once the moisture is removed, the lead and zinc are placed in temporary storage in the concentrate storage building.

An independent contractor transports the processed zinc and lead by truck to the Employer's port operation, which is situated on the shore of the Chukchi Sea, approximately 50 miles west of the mine. About 36 to 40 truckloads, or approximately 5000 metric tons, of concentrate are shipped each day. The port operation, which also operates on the same continuous hourly basis as the mine, receives and stores the zinc and lead for shipment. The Employer loads the concentrate onto barges, which are then lightered out by contractors to waiting ships, which deliver the lead and zinc to locations across the world. Supplies, including fuel, for the Employer's mine and port operations are shipped by barge and also received through this port. Due to the

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<sup>4</sup> In Case 19-RC-14625 I found that the petitioned-for unit of electrical department employees, which is composed of electricians, instrumentation technicians, and communications technicians, was an appropriate craft unit. The Board denied the Employer's request for review challenging that unit determination.

weather at this location, the port is accessible to ships only for approximately 100 days each year from mid July to mid October.

Power to operate the mill and the mining operation is generated from the Employer's powerhouse. Diesel engine prime movers connected to electrical generators produce the electrical power needed. The Employer's mining operation has two powerhouse buildings. The main powerhouse has six diesel-powered engines that are connected to electrical generators with outputs of approximately 5000 kilowatts each, while the auxiliary powerhouse has two diesel engines that are connected to generators with outputs of approximately 5200 kilowatts each. The two powerhouse buildings are connected and pressurized. The Employer's port operation has its own powerhouse, which consists of four smaller diesel-powered electrical generators. Three of the generators have outputs of 650 kilowatts and the fourth has an output of 1200 kilowatts.

Approximately 350 employees are employed at the Red Dog Mine, with approximately 22 employees located at the port. Due to the operation's remote location, the Employer provides transportation for its employees to and from the mine by air and operates an airstrip at the mine operations. The Employer also provides living and eating quarters for its employees, as well as those of the trucking contractor's employees. Employees' tours of duties vary depending on the Employer's operating needs and the home location and personal preference of the employees. Most work a 4-week-on and 2-week-off, or 2-week-on and 1 week-off schedule.

## **B. Relevant Factors**

### **1. Organization**

The Employer's operations are broken down into 7 divisions: mine operations, mill operations, maintenance, environmental, accounting and information systems, materials management, and human resources. Each is headed by an operations superintendent who reports to the General Manager. The parties stipulated that those positions, as well as a number of supervisory, managerial, professional, and office clerical positions should be excluded from whatever unit is found appropriate.<sup>5</sup>

Within the maintenance division is the group of powerhouse operators whom the Petitioner seeks to represent. Only the powerhouse operators are assigned to and regularly work in the powerhouse at the mine, though other classifications come into the powerhouse on an intermittent basis. The powerhouse operators at issue do not operate or maintain the generators at the port. Rather, the electrician and heavy equipment mechanics run the power-generating equipment at the port.

The main powerhouse is the size of three-quarters of a football field. Against one wall is an enclosed control room where the powerhouse operators monitor the

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<sup>5</sup> All the positions that the parties agree should be excluded from the unit appear in white on the Employer's organizational chart, which was received into evidence as Employer Exhibit Number 6 in Case 19-RC-14625, and as Exhibit Number 48 in the instant matter.

generators and perform other duties such as filling out logs and writing work orders. As the noise from the operating generators is quite loud, the control room is somewhat soundproofed and the operators wear ear protection. Each of the six control panels associated with the six generators has a computer and touch screen as well as digital readings that reveal various information about each generator such as its oil and water pressure. The powerhouse building also includes a locker room where the powerhouse operators eat their lunch and store their clothes and spare job parts.

At the time of the hearing, the powerhouse department consisted of 10 operators. Of the 10 operators, the Employer classifies the vast majority of them (8) as Level VI operators. Level VI is the highest pay grade within the maintenance division. Level VI operators are also the most experienced and train the lower level powerhouse operators. The powerhouse supervisor consults with the Level 6 powerhouse operators when deciding whether operators are qualified for promotion. Although the Employer does not require prior powerhouse work when hiring powerhouse operators, all the powerhouse operators hired by current powerhouse supervisor Walter Lewis had prior powerhouse experience or related experience working on the type of generators found in the powerhouse. The Employer does not require powerhouse operators to be licensed or certified in order to be hired or promoted. The record does not contain any evidence showing that any of the powerhouse operators are licensed by the State of Alaska.

## **2. Apprenticeship Programs and Other Training**

The Employer's informational brochure states that apprenticeships are available in trades such as power generation. Despite this statement, the unrebutted testimony of powerhouse supervisor Lewis reveals that the Employer does not have an apprenticeship program or formal training for its powerhouse operators. Powerhouse operators are not expected to study courses or pass tests as part of any formal training. Rather, all training received by the powerhouse operators is on-the-job training. Lewis acknowledged, however, that he has had discussions with the Employer's management and an official from the Department of Labor concerning the establishment of a formal apprenticeship program for powerhouse operators. Lewis has also developed department competency standards for powerhouse operators as part of an ongoing project. At the time of the hearing, however, those competency standards were neither completed nor in effect at the Employer's operations.

There is other training that all production and maintenance employees receive. As the Employer's mine is subject to the Federal Mine Safety and Health Act ("MSHA"), all production and maintenance employees, including powerhouse operators, must receive initial and refresher surface mine training mandated by MSHA. These employees, as well as the exempt employees excluded by the parties, also receive 4 to 6 hours of environmental training together.

## **3. Supervision**

Powerhouse supervisor Lewis alone supervises the powerhouse operators. He is responsible for hiring, assigning work to, and evaluating powerhouse operators. Lewis

has been the supervisor for approximately four years. No other classification of employee is supervised by the powerhouse supervisor.

#### **4. Work Duties and Assignments**

Powerhouse operators are responsible for providing power to the mine by operating and maintaining the large generators in the powerhouse. They spend approximately equal amounts of time performing operational and mechanical duties. The operational duties include performing walks around the powerhouse to check the engines and generators, and significant time in the control room reading the gauges on the control panels to insure that the engines are functioning properly. Mechanical duties involve repair work and preventative maintenance on the generators, engines, and the powerhouse support systems such as the heat exchangers and the waste heat recovery units. In performing these duties, the powerhouse operators often use overhead cranes due to the huge size of the generators and engines in order to remove parts for replacement or repair. They are also responsible for performing engine overhauls, though the Employer has used service technicians from the manufacturer of the large generators to perform those duties when the powerhouse operators' workload is too great. Besides these duties, the powerhouse operators spend approximately 20% of their time cleaning the equipment and mopping the floor of the powerhouse. Powerhouse operators are also responsible for purifying the used oil from the mining operation that is delivered to the powerhouse in drums. The powerhouse operators pump the used oil out of the drums, run it through a purification process, and pump the purified oil into storage tanks in the powerhouse where it is then used to fuel the engines in the powerhouse.

Powerhouse operators write their own work orders, as well as work orders for other classifications such as electricians, to deal with repair or maintenance problems that they discover in monitoring the engines and generators. The powerhouse supervisor also assigns work orders to powerhouse operators, but no other supervisor does. Work orders are also computer-generated to deal with certain preventative maintenance requirements.

#### **5. Functional Integration**

Although powerhouse operators have contact with other groups of employees, it is not nearly as significant as that which I found in Case 19-RC-14625 between the electrical department employees and other production and maintenance employees. Unlike the electricians who make regular rounds to perform duties in the mill and mine pit, the powerhouse operators basically remain in the powerhouse to perform their duties. The record does reveal, however, that they have fairly frequent contact with electricians who perform some electrical repair work on the generators in the powerhouse, and occasional contact with other groups of employees who come to the powerhouse such as millwrights, HVAC personnel, and surface operators.

Like the electricians' duties, the duties of the powerhouse operators are functionally integrated into the performance and ultimate success of the Employer's operations. As no local power company exists in this remote Alaska location, the

Employer must furnish its own power for the mine and mill through the operation of its powerhouse generators. The powerhouse operators are ultimately responsible for operating and maintaining the generators so that they produce sufficient power to keep the mine and mill equipment running properly. Thus, the Employer's mining operations are dependent on the powerhouse operators performing their duties properly to insure uninterrupted production.

## **6. Wages and Benefits**

Employees' wages follow the same scale regardless of classification up through Level V. For example, all entry level employees receive \$14.55 per hour, while a Level V employee in any department receives \$22.73 per hour. Differences exist at the most experienced levels, however. A Level VI powerhouse operator receives \$25.37 per hour, like other Level VI employees within the maintenance division, while Level VI operations employees receive \$24.21 per hour. All of the Employer's production and maintenance employees receive the same employment benefits, including medical, dental, and life insurance, sick leave and retirement benefits.

## **7. Interchange**

Interdepartmental transfers among the powerhouse operators have been infrequent since the mine commenced operations in 1989. Powerhouse supervisor Lewis testified that in the four years that he has been a supervisor in that department, no one has transferred into or out of powerhouse operator positions. The Employer's records reveal that since 1989, only 5 employees of the approximately 3500 employees who have worked for the Employer have transferred into or out of the powerhouse department. Two of those transfers involved employees who transferred out of the powerhouse after working there for only one and two days respectively. The most recent transfer occurred in August 1998.

## **8. Other Factors**

Like most of the Employer's production and maintenance employees, with the exception of three classifications (metallurgical techs, fire techs, and lab techs),<sup>6</sup> the powerhouse operators work 11 and ½ hour days. They also work day or night shifts like the other production and maintenance employees. Usually two to three powerhouse operators work on a shift. The majority of the Employer's workforce works from 7 a.m. to 7 p.m., but some start at 6:30 or 6 a.m. Day-shift powerhouse operators work from 6:30 a.m. to 6:30 p.m. while night-shift powerhouse operators work from 6:30 p.m. to 6:30 a.m. At the end of the night shift and beginning of the day shift, a turnover meeting is held to discuss any information that the incoming operators should know. Only powerhouse operators and the powerhouse supervisor attend that meeting.

Powerhouse operators use some specialized tools specifically designed to work on the large Wartsila generators that other employees do not use. Estimates concerning the amount of time that powerhouse operators use the specialized tools in

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<sup>6</sup> Those employees work 10-hour days.

performing their duties varied between the two witnesses who testified at the hearing. Supervisor Lewis testified that they use 90% of the tools issued to other classifications of employees and use specialized tools only about 10% of their time. Powerhouse operator Michael Bruner testified that 40% of the tools that powerhouse operators use are specialized tools.

No other labor organization seeks to represent the Employer's powerhouse operators on a broader basis than the Petitioner. No history of collective bargaining exists among the petitioned-for group of employees.

### **III. POSITIONS OF THE PARTIES**

The Petitioner contends that the unit of powerhouse operators sought is an appropriate unit because they constitute a craft unit of highly skilled and licensed employees with common interests separate and apart from the other production and maintenance employees.<sup>7</sup> On the other hand, the Employer asserts that the powerhouse operators sought do not constitute a craft unit and do not have an identifiable community of interest separate and apart from the other production and maintenance employees. It therefore argues that the smallest appropriate unit is all of the Employer's production and maintenance employees (approximately 225 such employees) except for the electrical department employees already found to constitute an appropriate unit.

### **IV. ANALYSIS**

As set forth above, the parties disagree whether the unit of powerhouse operators sought is a craft unit. A craft unit consists of a distinct and homogeneous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment." *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994). In determining the whether the unit sought constitutes a separate craft unit, the Board considers "whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training." *Id.*

Contrary to the contention of the Petitioner, I do not find that the unit of powerhouse employees constitutes a craft unit. Unlike the Employer's electricians that I found to be a craft unit, the powerhouse employees do not receive any formal training through a formal apprenticeship program offered by the Employer. They are not

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<sup>7</sup> The Petitioner stated at the hearing that it would proceed to an election in any unit that the Regional Director finds is appropriate.

expected to take and master certain courses or pass any tests demonstrating that they have acquired specific knowledge. Rather, all of their training is through on-the job training. Unlike many of the Employer's electricians who are licensed by the State of Alaska after passing a State-administered test, the evidence does not establish that the powerhouse operators have obtained comparable licenses. Furthermore, the evidence is insufficient to establish that the work performed by the powerhouse employees requires the use of substantial craft skills and specialized tools. Thus, the record discloses that the powerhouse operators spend a significant amount of time performing cleaning duties and processing used oil for burning in the diesel-powered engines. Although the powerhouse operators use some specialized tools, the conflicting record testimony suggests they use them only about 10% to 40% of their working time. The vast majority of tools that they use are also used by other production and maintenance employees.

Nonetheless, I further find that the unit sought is an appropriate unit under traditional Board criteria. A unit comprising "the powerhouse department . . . has been traditionally found to constitute a separate appropriate unit, when requested." *BP Alaska, Inc.*, 230 NLRB 986, 987 (1977). Many of the factors that the Board relies on to find that powerhouse employees constitute an appropriate unit of functionally distinct employees are present here. Thus, the powerhouse employees work the vast majority of their time solely in the powerhouse; perform a function that is distinct from the milling and mining functions of many of the other employees; enjoy separate supervision; have only occasional contact with other employees; and experience very little interchange with employees in other departments. These factors, combined with the absence of any bargaining history for these employees and the fact that no other labor organization seeks to represent these employees on a broader basis, convinces me that the unit sought is an appropriate unit. See, e.g., *Towmotor Corp.*, 187 NLRB 1027 (1971); *American Can Co.*, 179 NLRB 18 (1969); *Mesta Machine Co.*, 167 NLRB 99 (1967).

I find unconvincing the Employer's argument that the unit sought is inappropriate because the powerhouse operators do not participate in any formal training or apprenticeship program. The Board rejected a similar argument in *BP Alaska, Inc.*, 230 NLRB 986, 987 (1977). In that case the central power station ("CPS") employees sought maintained and operated gas-fired turbines and emergency generators, in order to provide electricity to the employer's oil production operations on the North Slope of Alaska. Like the powerhouse operators here, the CPS employees did not participate in any formal training or apprenticeship program, and were not required to be licensed by the State of Alaska. Moreover, like the powerhouse operators here, the majority of the employer's CPS employees were highly experienced in powerhouse work. Based on the above circumstances, the Board concluded that the CPS acted as a *de facto* public utility supplying energy for the oil operations and that while a facility-wide unit might be appropriate, a separate unit of CPS employees was also appropriate. For the same reasons, I find that the powerhouse operators here constitute a separate appropriate unit. Although the Employer argues here that the duties of the powerhouse employees are functionally integrated into the performance and ultimate success of the Employer's mining operation, the same dynamic was true with respect to the CPS employees and



that employer's oil operations. Furthermore, as was true with respect to the Employer's electricians, the highly integrated nature of the Employer's operations is insufficient to compel the conclusion that only a broader production and maintenance unit is appropriate. See, e.g., *American Can Co.*, 179 NLRB 18 (1969) (Board finds a unit of powerhouse steam recovery power employees to be appropriate, and rejects employer's contention that the highly integrated nature of its operations required a finding that only a unit composed of all production and maintenance employees was appropriate); *Mesta Machine Co.*, 167 NLRB 99 (1967) (same with respect to unit of powerhouse and boilerhouse employees sought).

I likewise find unpersuasive the Employer's contention that the alleged overlapping of duties favors a finding that the powerhouse operator unit is inappropriate. The record evidence establishes that no other group of employees at the mining operation performs the duties performed by the powerhouse operators and powerhouse operators do not perform the duties of other production and maintenance employees. Although the Employer relies on the fact that at the port, where the powerhouse operators do not work, the electricians and heavy duty mechanics operate and maintain the generators, I find such minimal overlap in duties insignificant in light of the significantly smaller generators in operation at the port and the fact that the duties of those electricians and mechanics at the port have no effect on the generation of power essential to the Employer's primary mining and milling operations.

The record also refutes the Employer's contention that employee interchange favors rejection of the unit sought. Powerhouse supervisor Lewis testified that in the four years he has been a supervisor in that department, no employee has transferred into or out of that department. Moreover, as the Employer's own records reveal only 5 transfers between the powerhouse department and other departments over the approximately 16 years since the mine opened, the record fails to support any claim of frequent interchange. Of the 5 transfers, the most recent occurred nearly 7 years ago. Evidence of 5 transfers over a 16 year span is clearly insignificant under Board precedent. See, e.g., *Mirage Casino-Hotel*, 338 NLRB 529, 533 (2002) (in finding unit of carpenters to be an appropriate unit, Board finds that evidence of 14 transfers over 10-year span is insignificant); *Atlantic Richfield Co.*, 231 NLRB 31, 32 (1977) (3 transfers in first 8 and ½ months of cross-training program insufficient).

As it argued with respect to the electricians in Case 19-RC-14625, the Employer again argues that only an overall production and maintenance unit is appropriate because the powerhouse operators receive the same employment benefits and generally the same wage ranges as those of the excluded employees;<sup>8</sup> all of the Employer's employees are subject to the same conditions of employment set forth in the Employer's policy and conduct manuals; and powerhouse operators receive some of the same training as excluded employees. I again find that although these factors support a conclusion that a wall-to-wall unit of production and maintenance employees

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<sup>8</sup> The only exception is that whereas Level VI powerhouse operators receive \$25.37 per hour like certain other Level VI employees and Level VII mill operators, Level VI surface and mine operators receive \$24.21 per hour.

would be an appropriate unit, they are insufficient to show that the unit sought by the Petitioner is not an appropriate unit. See, e.g., *B P Alaska, Inc.*, 230 NLRB 986, 987 (1977) (separate unit of central power station employees found appropriate even though they receive relatively the same wages and benefits as the excluded employees and are subject to the same central labor policies).

In sum, I find that the evidence demonstrates that the powerhouse operators constitute a functionally distinct and homogeneous group of employees that the Board has traditionally found to constitute a separate appropriate unit. *B P Alaska, Inc.*, 230 NLRB 986 (1977); *Towmotor Corp.*, 187 NLRB 1027 (1971).

## **V. CONCLUSION**

In view of the record evidence, I shall direct an election in the following appropriate Unit:

All powerhouse operators employed by the Employer at its Red Dog mine located near Kotzebue, Alaska, but excluding all other employees, managers, guards, and supervisors as defined in the Act.

There are approximately 10 employees in the Unit found appropriate.

## **VI. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1547, AFL-CIO.

### **A. List of Voters**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election

should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, on or before March 30, 2005 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by 5 p.m., EST on April 6, 2005. The request may **not** be filed by facsimile.

**DATED** at Seattle, Washington this 23rd day of March 2005.

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Richard L. Ahearn, Regional Director  
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